

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED

CHAPTER 11

2002 SEP 19 PM 4:01

IN RE:

Nilson Van & Storage, Inc.

Debtor.

U.S. BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA
Case No. 01-0161

TO: ALL CREDITORS AND PARTIES IN INTEREST

**NOTICE AND APPLICATION FOR SALE OF PROPERTY
FREE AND CLEAR OF LIENS, ENCUMBRANCES AND OTHER INTERESTS PURSUANT
TO 11 U.S.C. §363(b)(1) and (f)**

YOU ARE HEREBY NOTIFIED that the debtor is applying for approval to sell the property of debtor's estate described below free and clear of all liens, encumbrances, and interests according to the terms and conditions stated below.

TAKE FURTHER NOTICE that any response, return and/or objection to this application, should be filed with the Clerk of the Bankruptcy Court no later than **twenty (20) days** from service of the motion and a copy simultaneously served on all parties in interest.

TAKE FURTHER NOTICE, the Court will conduct a hearing on **October 21, 2002, at 9:00 a.m.**, at the J. Bratton Davis United States Bankruptcy Courthouse, 1100 Laurel Street, Columbia, South Carolina 29201. No further notice of this hearing will be given.

TYPE OF SALE: Private. See attached Contract of Sale.

PROPERTY TO BE SOLD: Real property located on 811 Old Augusta Road, Greenville, SC (Greenville Property). Tax I.D.#400.1-1-11

PRICE: \$250,000

APPRAISED VALUE: Appraisal conducted in 1997 for BOA indicates value of \$308,000.

BUYER: Larry Wilson or his assigns. The purchaser has no connections with the Debtor.

PLACE AND TIME OF SALE: The closing of the Contract shall take place at the office of the Purchaser's attorney or other offices stipulated by Purchaser. The closing shall be held no later than thirty (30) days from the end of the Inspection Period, which is further defined as sixty (60) days from the final execution of the Contract. See attached Contract for further details.

SALES AGENT/AUCTIONEER/BROKER: Coldwell Banker Commercial Caine Real Estate for the Seller and Grubb & Ellis/ The Furman Company for the Purchaser.

COMPENSATION TO SALES AGENT/AUCTIONEER/BROKER: 6% to be divided equally between the Seller's broker and the Purchaser's broker.

ESTIMATED TRUSTEE'S COMMISSION ON SALE: None.

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LIENS/MORTGAGES/SECURITY INTERESTS ENCUMBERING PROPERTY: Bank of America, N.A. (BOA) has a lien on the property. From the sale of the Greenville Property and the sale of property in Fayetteville, North Carolina (Fayetteville Property), which is pending before the Court, BOA will receive \$210,000.00 as provided in the Debtor's confirmed plan of reorganization, and will receive \$15,000 per month until such payment is made.

DEBTOR'S EXEMPTION: None.

PROCEEDS ESTIMATED TO BE PAID TO ESTATE: Debtor estimates that BOA will receive approximately \$23,000 from the sale of the Fayetteville Property, and \$187,000 from the sale of the Greenville Property, for a total payment of \$210,000. Therefore, Debtor estimates that the estate will receive \$63,000, prior to the payment of real estate commission, other closing costs, and any property taxes that are owed.

Debtor is informed and believes that it would be in the best interest of the estate to sell said property by private sale. Debtor's use of sales proceeds provides a reduction of the debt of BOA and creates money to assist with Debtor's ongoing operations.

The court may consider additional offers at any hearing held on this notice and application for sale. The court may order at any hearing that the property be sold to another party on equivalent or more favorable terms.

The trustee or debtor, as applicable, may seek appropriate sanctions or other similar relief against any party filing a spurious objection to this notice.

WHEREFORE, applicant requests the court issue an order authorizing sale of said property and such other and further relief as may be proper.

Service Date: September 19, 2002

Columbia, South Carolina
September 19, 2002.

ROBINSON, BARTON, MCCARTHY
& CALLOWAY, P. A.

BY: 

Barbara George Barton
District Court I.D. #1221
Attorney for the Debtor
1715 Pickens Street
P. O. Box 12287
Columbia, SC 29211
(803) 256-6400

Address of Court:
J. Bratton Davis United States Bankruptcy Courthouse
P.O. Box 1448
Columbia, SC 29202

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

CONTRACT

This Contract is entered into by and between NILSON VAN & STORAGE, whose address is Post Office Box 3219, Columbia, South Carolina 29230 hereinafter called the "Seller", and Larry Wilson or assigns, whose address is Post Office Box 6303, Greenville, South Carolina 29606, hereinafter called the "Purchaser".

WITNESSETH:

In consideration of the mutual covenants and agreements herein contained, the Seller agrees to sell to the Purchaser and Purchaser agrees to purchase from the Seller, on the terms and conditions hereinafter set forth, the following described real estate (the "Property"):

The Property located on 811 Old Augusta Road, Greenville, South Carolina in Greenville County and further described as a portion of Greenville County Tax Map # 400.1-1-11 and shown on the attached Exhibit "A".

I. Purchase Price.

The purchase price shall be Two Hundred Fifty Thousand and NO/100 (\$250,000.00) Dollars.

a. The sum of Five Thousand and NO/100 Dollars (\$5,000.00) has been deposited into escrow by Purchaser with Grubb & Ellis/The Furman Company. Said earnest money is to be disbursed according to the terms of this Contract. Said earnest money shall apply to the purchase price at the time of Closing. If the Closing does not occur for any reason not the fault of Purchaser, the earnest money shall be promptly returned to Purchaser.

b. The balance of the Purchase Price shall be paid in cash or certified check at closing.

II. Title and Possession.

The Seller agrees to convey to Purchaser fee simple, good and marketable title to the Property at the time of Closing and to deliver a good and sufficient Warranty Deed in recordable form with all necessary stamps affixed thereto and all transfer taxes paid. Said Title shall be free of all liens, encumbrances, restrictions and easements, except those approved by Purchaser. The Seller shall surrender possession of the Property unto Purchaser simultaneously with the Closing.

Purchaser shall have Forty-five (45) days from the date of this agreement to review the title. Purchaser shall submit in writing to Seller notice of any title exceptions which are not acceptable to Purchaser. Seller shall have 15 days from the date of such notice to take such action as Seller deems appropriate to remove such title exceptions. Purchaser's failure to deliver title comments shall be deemed to establish Purchaser's satisfaction with the status of the title

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except for liens or other encumbrances which are to be satisfied under other provisions of this agreement. If Seller has not satisfactorily cured the Purchaser's objection to title, Purchaser shall have the option of waiving its objection and continue forward with the transaction without a reduction in Purchase Price, or terminate the agreement, in which case the agreement will be void and the Earnest Money shall be promptly refunded to the Purchaser, and neither party shall have any further obligation hereunder.

III. Closing.

The Closing shall be held no later than thirty (30) days from the end of the Inspection Period as defined herein at time and place to be mutually agreed upon by all parties, provided however, that the Purchaser and Seller satisfy all of the conditions of this Contract, unless otherwise agreed upon by both parties.

IV. Default.

a. Seller's Default. If, prior to closing, the Seller defaults or is in breach of any representation, covenant or warranty on its part made under this Agreement, the Purchaser shall be entitled to an immediate return of all earnest money plus interest and will also be entitled to all rights and remedies available to it at law or in equity including the right to pursue Specific Performance of the Contract.

b. Purchaser's Default. The parties recognize that, due to fluctuations in real estate values over time and the differing opinions experts may have of the value of the property, it would be difficult to calculate the amount of damages the Seller would sustain if this Contract were breached by the Purchaser. Therefore, it is agreed that in the event of such material breach by the Purchaser prior to closing, the Seller, as its sole remedy, shall be entitled to liquidated damages from the Purchaser in an amount equal to the following: 1) the earnest money which shall be immediately delivered to Seller, 2) all surveys, site plans, engineering studies, utility letters, etc. undertaken or received by Purchaser during the Inspection Period, which shall also immediately be delivered to Seller.

V. Real Estate Commission.

Upon closing, Seller agrees to pay a total commission equal to six percent (6%) of the final Purchase Price to Coldwell Banker Commercial Caine Real Estate and Grubb & Ellis/ The Furman Company. Said commission will be divided 50/50 by the respective brokers. No Agent or Broker may bring any action against the Purchaser for any portion of any such fees or commissions. Except as set forth above, the parties mutually agree to indemnify and hold each other harmless from claims for commissions asserted by any party as the result of dealings claimed to give rise to such commissions.

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VI. Taxes.

Real Estate Property Taxes, if any, for the current year shall be prorated between Purchaser and Seller as of the date of the Closing based upon the current year's tax notice applicable to the Property.

VII. Binding Effect of Instrument and Assignment.

This Agreement and any properly executed addenda, alterations or assignments of same shall be binding upon and shall inure to the benefit of the heirs successors and assigns of the parties hereto.

VIII. Closing Costs and Prorations.

Seller shall pay for the preparation of Seller's deed, for the transfer tax stamps on the deed and for Seller's own attorney's fees or other costs incurred in connection with this transaction. Purchaser shall pay for its own recording costs, title insurance, environmental studies, subsurface soil examinations and its own attorney's fees.

IX. Representations of Seller.

Seller hereby makes the following representations and warranties which shall, as a condition of this Agreement, continue to be true as of the date of Closing:

- a. Seller has the authority to enter into this Agreement and Seller now holds fee simple, marketable title to the Property.
- b. To the best of Seller's knowledge, there are no known actions or proceedings pending or threatened by any party which would adversely affect the subject real Property. There are no condemnation or eminent domain proceedings pending against the Property or any part thereof and the Seller has received no notice, oral or written, of the desire of any public authority or any other entity to take or use the Property or a part thereof.
- c. Other than the documents specifically set forth in Exhibits to this Agreement, to the best of Seller's knowledge there are no agreements, guarantees, indemnities or offers, either written or oral, made by the Seller and affecting the Property.
- d. There are no parties in possession or parties who have any right to possess the Property.
- e. Other than amounts disclosed in tax bills provided by Seller to Purchaser, no other taxes have been assessed against the Property nor does Seller have any knowledge of any taxes planned to be assessed against the Property in the one year period following the Closing.



f. Seller is selling Property and any improvements thereon in its "as-is" condition. Seller will not warrant or be liable for the condition or serviceability of the improvements or any mechanical systems (i.e., heat, electrical, and plumbing) located on the Property.

g. To the best of Seller's knowledge, there are no pending or threatened judicial, municipal or administrative proceedings affecting the Property or in which Seller is or will be a party by reason of Seller's ownership of the Property.

The above Representations and Warranties shall be deemed made by Seller to Purchaser not only as of the date of the execution of this Contract, but also as of the closing date of this transaction and shall survive the closing, and shall extend only to the Purchaser, his heirs and assignees.

X. Purchaser's Inspection

Purchaser shall have sixty (45) days, beginning immediately upon final execution of this contract by both parties, to go upon the Property with its agents and engineers for the purpose of conducting engineering test of the property and determining if the property and improvements thereon are suitable for use as a powder coating, light assembly, and storage facility. Said privileges shall include the right to survey, make soil test, borings, environmental and hazardous waste tests, provided however, the Purchaser shall hold Seller harmless from any damages incurred by Seller and/or any damages or injury or claim thereof, including attorney's fees arising out of, or in any way connected with the acts or omissions of Purchaser, its agents and engineers through the exercise of such privilege.

Should Purchaser, who shall have sole discretion, determine that the Property is unsatisfactory for Purchaser's contemplated use and delivers written notice of such to Seller or Seller's agent within the sixty (45) day Inspection Period, all earnest money shall be promptly refunded to Purchaser. If Purchaser terminates this Agreement during the sixty (45) day Inspection Period, Purchaser shall deliver to Seller, within seven (7) calendar days, all studies, site plans, utility letters, etc., done or received by Purchaser during the Inspection Period.

XI. Covenants of Seller

Seller hereby covenants with Purchaser as follows:

a. From the date hereof until the date of Closing, Seller shall not enter into any agreement with respect to the Property which will survive Closing or otherwise affect Purchaser's use, operation or enjoyment of the Property after the Closing.

b. At all times prior to the Closing, Seller shall maintain the Property in good repair and order in accordance with applicable laws, ordinances, rules and regulations affecting the Property. Seller shall deliver the Property to Purchaser at Closing in substantially the same condition it was on the date hereof, normal wear and tear excepted.

c. All actions contemplated in this Agreement which are necessary to effectuate the transaction contemplated herein will be taken promptly and in good faith by Seller.

d. Seller shall not transfer, encumber, alienate or cause or allow liens to attach to the Property.

e. Seller shall promptly notify Purchaser of any material change in the condition of the Property which would make any representation or warranty of Seller untrue or misleading.

XII. Hazardous Waste

Seller expressly represents to Purchaser that to the best of Seller's knowledge the Property and any improvements thereon have not been used and are not presently being used for the handling, storage, transportation or disposal of hazardous or toxic materials. Furthermore, Seller has made Purchaser aware that Seller has entered into a Right-of Entry agreement with the United States Army Corps of Engineers, a copy of which is attached hereto as Exhibit "B", for the purpose of conducting an environmental investigation. Seller and Purchaser expressly acknowledge that the Brokers, Coldwell Banker Commercial Caine Real Estate and Grubb & Ellis / The Furman Company have not made an independent investigation or determination with respect to the existence or nonexistence of asbestos, PCB transformers, or other toxic, hazardous or contaminated substances, and/or underground storage tanks, in, on, or about the Property. Any such investigation or determination shall be the sole responsibility of Purchaser and Brokers shall not be held responsible therefor. This paragraph shall survive the Closing and shall not be merged with or into delivery of the Warranty Deed or other Closing documents.

XIII. Bankruptcy Court Approval. This contract is contingent upon approval by the U.S. Bankruptcy Court for the District of South Carolina and Seller agrees to move promptly to initiate the process of obtaining such approval.

XIV. Facsimile Signatures

For the purposes of this Contract, signatures transmitted by facsimile will be acceptable and fully binding upon Purchaser and Seller.

XVI. Notices

To Purchaser: Larry Wilson
Post Office Box 6303
Greenville, SC 29606

To Seller: Nilson Van & Storage, Inc
Post Office Box 3219
Columbia, South Carolina 29230

Attn: David Nilson

David Nilson 9/11/02

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No. 4189 PAGE 07
 P. 7

No. 4139

p. 2

XVII. Survival.

Any provision herein contained which by its nature and effect if required to be observed, kept or performed after the closing, shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

XVIII. Complete Agreement

This Agreement constitutes the full and complete agreement of the parties hereto and shall not be modified, amended, or altered except by written memorandum of the parties.

XIX. Authorization Any of the following are authorized to close the Contract with the Purchaser for Nilson Van & Storage; David A. Nilson, Matt W. King, Senior Vice-President, or Tommy W. Burgess, Comptroller.

In testimony whereof, witness the signatures of the parties hereto, executed this 11th day of September, 2002.

In the presence of:

PURCHASER

LARRY WILSON

Witness

Witness

SELLER

NILSON VAN & STORAGE

By:

143

Witness

Witness

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In the presence of:

PURCHASER

LARRY WILSON

Witness

Witness

SELLER

NILSON VAN & STORAGE

By: [Signature]

Its: President

[Signature]
Witness

[Signature]
Witness